

**TOWN OF FOUNTAIN HILLS  
MINUTES OF THE EXECUTIVE AND REGULAR SESSION OF THE  
FOUNTAIN HILLS TOWN COUNCIL  
March 5, 2009**

• **CALL TO ORDER**

Mayor Schlum called the Executive Session to order at 5:30 p.m.

**AGENDA ITEM #1 – ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION.**

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Jay T. Schlum, Councilmember Dennis Contino, Councilmember Henry Leger, Councilmember Keith McMahan, Councilmember Cassie Hansen, Vice Mayor Mike Archambault and Councilmember Ginny Dickey. Town Attorney Andrew McGuire, Town Manager Rick Davis, Former Mayor Wally Nichols, Former Councilmember Ed Kehe, outside litigation counsel Jeff Murray, Tom McMahon, South West Risk Representative, Director of Public Works Tom Ward, Director of Planning and Zoning Richard Turner and Town Clerk Bev Bender were also present.

**VOTE TO GO INTO EXECUTIVE SESSION: (i) PURSUANT TO A.R.S. §38-431.03(A)(4), FOR DISCUSSION OR CONSULTATION WITH THE ATTORNEYS OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS ATTORNEYS REGARDING THE PUBLIC BODY'S POSITION REGARDING CONTRACTS THAT ARE THE SUBJECT OF NEGOTIATIONS, IN PENDING OR CONTEMPLATED LITIGATION (SPECIFICALLY, THE GOLF RESORT, LLC LITIGATION); AND (ii) A.R.S. §38-431.03(7), DISCUSSION AND CONSULTATIONS WITH DESIGNATED REPRESENTATIVES OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS REPRESENTATIVES REGARDING NEGOTIATIONS FOR THE PURCHASE, SALE OR LEASE OF REAL PROPERTY (SPECIFICALLY, POSSIBLE FIRE STATION SITE).**

Councilmember McMahan **MOVED** to convene the Executive Session and Councilmember Dickey **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

Without objection, the Executive Session was adjourned by the Mayor at 6:13 p.m.

**REGULAR SESSION**

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Schlum called the Regular Session to order at 6:30 p.m.

**INVOCATION** – Youth Minister David Taylor, Jr., First Baptist Church

**ROLL CALL** – Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember McMahan, Councilmember Hansen, Vice Mayor Archambault and Councilmember Dickey. Town Attorney Andrew McGuire, Town Manager Rick Davis and Town Clerk Bev Bender were also present.

- **MAYOR'S REPORT**

Mayor Schlum announced that the Town's St. Patrick's Day Celebration would take place on March 14th and said that the Fountain would turn green on that day and on the 17th (St. Patrick's Day) at noon as well. He encouraged attendance at this annual event.

Mayor Schlum also advised that the Planning and Zoning Commission took public testimony on the PAD ordinance and voted to continue it to their March 26th meeting for further review. He noted that the Commission planed to take action on this matter at their April 9th meeting and the issue should come before Council on May 7th.

Mayor Schlum also announced that Consent Agenda #4 has been removed from the consent agenda at the request of Town staff and that the applicant (MCO) was in agreement.

- **SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS**

- (i) ***Presentation by Rich Schultz, Senior Branch Director of the Mary Ellen and Robert McKee Branch of the Boys & Girls Clubs of Greater Scottsdale.***

Rich Schultz, Senior Branch Director of the Mary Ellen and Robert McKee Branch of the Boys & Girls Clubs of Greater Scottsdale addressed the Council and highlighted a brief PowerPoint presentation for the benefit of the Council and audience.

Mr. Schultz noted that the Mission of the Boys & Girls Clubs was to provide a positive environment, quality programs, healthy lifestyles, and lifelong learning skills for school-age youth in Fountain Hills. He added that the Vision of the Boys & Girls Clubs was that all youth who participated in Club programs would achieve personal success and make a positive contribution to society.

Mr. Schultz referred to slides that depicted ethnicity breakdowns and noted that the facility was open 242 days a year and had 1,005 members (575 males and 430 females). He reported that 700 of the members were ages 6-11 and 305 were ages 12-18. He stated that the youths were served through outreach and ancillary services and added that 40% of the members were from single parent households and 15% were economically disadvantaged.

Discussion ensued relative to various funding sources (i.e. program fees, development department (Special Event Revenue) and other items (grants, foundation, contributions, United Way, etc.; the fact that the Boys & Girls Club, with a grant partnership from the Town of Fountain Hills, would operate a Teen Center and implement/evaluate eight teen programs over a three-year period; the fact that the programs would be offered to members for free and be one hour per week for 12 consecutive weeks; the fact that the programs being offered are: Smart Girls, Skill Tech I and II, Digital Arts Suite, Money Matters, Power Hour, Jr. Staff Development and Passport to Manhood.

Mr. Schultz outlined the Money Matters program (goal statement, what was Money Matters, program assessment and program outcomes and advised that the Goal Statement is, "To promote financial responsibility among teens by building their basic money management skills and to help educate family members on basic money management skills." He explained that Money Matters: Make it Count helps teens gain useful knowledge and skills on various aspects of financial literacy,

including managing a checking account, budgeting, saving, investing, entrepreneurship, and paying for college. He highlighted examples of various sessions.

Additional discussion ensued relative to Program Assessment, Program Outcome and highlights of Teen Programs (over 350 participants, etc.). Mr. Schultz thanked the Council, staff and citizens of Fountain Hills for their continuing support and for providing him the opportunity speak to them this evening. Mayor Schlum thanked Mr. Schultz for his presentation and commended him and the organization on their tremendous accomplishments.

***(ii) Recognition of Peter Anderelli as "Youth of the Year" for the McKee Branch of the Boys and Girls Clubs of Greater Scottsdale.***

Rich Schultz also addressed the Council relative to this agenda item and explained that the "Youth of the Year" Award was the highest honor that could be bestowed upon a youth. He said that the program talked about the youths' character and service to the community as well as their leadership and noted that the youths went through an extensive program that included interviews. Mr. Schultz informed the Council that this year's "Youth of the Year" for the McKee Branch of the Boys and Girls Clubs of Greater Scottsdale was Peter Anderelli and said that he was a Fountain Hills High School student. Mr. Schultz stated the opinion that knowing Peter as he did, he was sure that five, ten or fifteen years from now people were going to hear a lot about Peter. He commented on his willingness to volunteer and his strength of character and said that Peter was present and would address the Council and give a two-minute speech - the same speech that he would be giving at "Youth of the Year" dinner on March 28th.

Mr. Anderelli addressed the Council and noted that one of the most crucial elements in the construction of his character was a book titled "The Phantom" and provided a short overview of the book and its effect on him. He said that being a part of the Boys & Girls Club had changed the way he looks at things and discussed the benefits he had realized as a result of his membership in this worthwhile organization.

Mr. Schultz outlined various competitions that Peter might have the opportunity to participate in and congratulated him on his efforts and successes to date. Mayor Schlum, on behalf of the Council, also commended Peter, thanked him for his service to the entire community and wished him the best of luck in his future endeavors.

***(iii) Mayor Schlum to present plaques recognizing the contributions to the Town of Fountain Hills by former Community Center Advisory Commissioner Dan Foster and former Senior Services Advisory Commissioners Myrle Erlich and John O'Flynn.***

Mayor Schlum stated that the Council and staff would like to present each of the three outgoing Commission members with a plaque in recognition of their years of service to the Town. He added that he would like to read some comments that Samantha Coffman (Community Center and Senior Services Director) put together regarding these individuals' service to the community.

The Mayor stated that Dan Foster served on the Community Center Advisory Commission from 2005 to 2008 and said that "Active, On the Go, Energetic and Full of Life" all describe the retirement that Mr. Foster leads in Town. He added that after a 30-year career as a corporate Vice President of G.T.E., Mr. Foster and his wife Jean retired in Fountain Hills. Over the years he has logged more than 11,000 hours of volunteer work. The Mayor stated that his humor and light hearted approach to life were always appreciated at meetings and his connection with many of the local groups gave the Commission a good perspective on what residents were looking for when using the Community Center. He added that staff was grateful for Dan's commitment and service to the Community Center.

Mayor Schlum announced that Myrle Erlich and her husband came to Town in 1989 as winter visitors. In 2000, they decided to make Fountain Hills their home. Myrle wanted to serve on the Senior Services Advisory Commission to provide direction and insight on senior issues. While serving on the Commission from 2005 to 2008, she focused her efforts on Adult Day Care by gathering information and researching the community's needs for this type of service. Myrle also focused on the "Baby Boomers" and she encouraged the Senior Activity Center to offer programs and activities that would be of interest to this group. She was instrumental in organizing this year's Holiday Cookie Exchange party and started up a new monthly program – the Coffee and Bagel Social Hour. The Mayor said that Myrle's many years of service and contribution to the Senior Services Advisory Commission were greatly appreciated.

Mayor Schlum noted that John O'Flynn was the Chairman of the Senior Services Advisory Commission during his tenure from 2005 to 2008. Prior to this service, he was the President of Senior Services of Fountain Hills for approximately 14 years. His contribution to the seniors was his talent for obtaining funding from government and local service organizations as well as from individuals. He was an ardent supporter of the Home Delivered Meals Program and delivered meals along with his devoted wife Betty on a monthly basis since the program's inception in 1990. The Mayor stated that sadly, John passed away in November of 2008, and that he was sorely missed as he was the rock and backbone of anything involving seniors in the community.

Mayor Schlum presented plaques to the various individuals mentioned above and thanked them all for their service to the Town. John's wife Betty accepted the plaque in recognition of John's exceptional service to the Town and its residents.

***(iv) Presentation of the quarterly budget report for the six-month period ending December 31, 2008 by Deputy Town Manager Julie Ghetti.***

Deputy Town Manager Julie Ghetti addressed the Council relative to this agenda item and highlighted a brief PowerPoint presentation.

Ms. Ghetti said that when they talked about the fiscal situation for the Town of Fountain Hills they focused on primarily two operating funds, the General Fund and the Streets Fund. She stated that looking at the first six months of the Fiscal Year and comparing it to last year for the same period of time, the Town was down by approximately \$700,000. She noted that there was a small variation in some of the numbers contained in the report she distributed. She added that last year at this time the General Fund had \$8.2 million and this year they had \$7.5. She noted that they were slightly under budget by almost \$600,000.

Ms. Ghetti discussed expenditures and reported that the Town was under budget by approximately \$1.5 million and said that staff has been watching expenditures for about the last four months to make sure that they did not spend more than the available resources. She said that at the end of December the Town had spent \$6.6 million and the budget was approximately \$8.1 so they were under budget on expenditures. Ms. Ghetti commented on local sales tax collections primarily in construction and retail and reported that construction (one-time revenue) was down 21% from the prior year. She noted that when staff projected construction sales tax revenues they did so based on permit activity and explained that there was a "lag" between when they obtained their permits and when they actually did the construction because the sales tax was paid during the construction period. She stated that they were ahead of budget by about \$400,000 because of the "lag." She explained that that would start to decrease because they knew there had not been any building permit activity so the number would continue to go down for at least the next couple of years. She reported that those revenues were transferred over to the Capital Projects Fund.

Ms. Ghetti discussed retail activity in Town and said that it was down about 4.4% from the prior year. She said that last year at this time they had \$1.8 million in retail sales taxes from their businesses and this year they were at \$1.7, which was exactly what they budgeted. She also discussed General Fund Revenues and said that in December 2007 they had \$8.1 million and in December 2008 they were at \$7.5 million so they

were at 93% of where they should be at six months but last year at this time they were at 95%. Ms. Ghetti reported that expenditures last year were at about 89% of the budget and this year they were at 91%.

Ms. Ghetti informed the Council that the current year revenue projection for the General Fund (where they thought they were going to be by the end of June) had changed somewhat since the last time she spoke on this issue. She said that they had revised the figure downward, primarily due to building activity, State Shared Revenues, and the Vehicle License Tax. She stated that staff believed the figures were going to be even less than projected and so revised the figures downward. She added that back in December staff had projected that State Shared Revenues would be down \$200,000 and staff believed that it was going to be \$200,000 less than what they budgeted. She noted that on building permits staff had thought that the figure would only be down \$200,000 but the Town had not had any building activity at all so staff believed now that it would be down \$500,000. She said that in the "other activity" (interest earnings, user fees, Community Center rentals, etc.) staff had originally projected that it would be down \$200,000 and now they were saying about \$250,000. She stated that instead of \$16.1 million in revenue, staff believes they would have about \$15.2 million. (Ms. Ghetti referred to a chart that showed where staff originally budgeted \$16.1 million.)

Ms. Ghetti spoke about Highway User Revenue Funds (HURF) and the fact that staff had projected \$1.9 million but now believed that the figure would be about \$1.7; Special Revenue Funds (restricted funds); the Downtown Development Revenue Fund, which came from local sales tax; an anticipated drop in development fees (down \$300,000); debt service (property tax); capital projects that were funded from construction sales tax and the fact that they would be over the projected amount by about \$300,000 but would taper off next year and the year after because of the "lag" in the no construction activity; a summary of the Town's capital projects (approximately \$4.4 million would be spent).

Ms. Ghetti informed the Council that staff was proceeding with caution as far as preparing the FY 2009-10 budget because it did not appear that the economy would improve. She reported that programs and objectives had been prioritized and funding for the capital projects depended on surplus General Fund revenues and staff did not anticipate that there would be any surplus General Fund revenues this year. She added that the next two or three years would provide very little funding for capital projects (until the Ellman property began development).

Ms. Ghetti commented that the projection for next year in General Fund Revenues was \$14.7 million and said that back in December staff thought that the figure might be \$14.9. She added that in the HURF fund, staff was projecting that that was going to be down \$200,000. Ms. Ghetti discussed long-term projections for 2008-09 and 2009-2010 and stated that the revenues and the expenditures were going to be the same, there was not going to be any surplus. She noted that if the Ellman property began to be developed the Town should receive more revenues than expenditures and would be able to catch up on some of the maintenance but added that in the long term that would eventually cross over, where the expenditures were going to outpace the revenues as well.

In summary, Ms. Ghetti assured the Council and the public that staff continued to monitor their revenues to ensure that they did not made any expenditures that they did not have adequate resources to pay for. She said that it was not anticipated that next Fiscal Year would reflect much of an improvement in the economy and next year's budget would include decreased levels of service while minimizing the effect on the citizens. Ms. Ghetti noted that when staff made decisions on what areas to cut the first things they looked at were the non-essential things or things that fall under the acronym of "stupid" (Silly, Time consuming, Useless, Problematic, Ineffective and Darn expensive). She explained that the second level included those items that could be delayed; items that were one-time expenditures. She added that staff was also looking at innovative ways to do things more efficiently and effectively without spending additional monies. She noted that the bottom layer was the last layer that they did not want to go to because that was where they really start to affect the citizens. She said that when they start laying off staff, that meant they were cutting

services because they did not have a real depth in staff. She reported that right now they were at the bottom of the second layer.

Ms. Ghetti thanked the Council for the opportunity to address them and indicated her willingness to respond to questions from the Council.

Mayor Schlum and members of the Council thanked Ms. Ghetti and her staff for their extensive efforts in this important area. The Mayor said that he knew that staff on all levels had been working very diligently to trim the budget as much as possible. He said that they had been charged by the Town Manager to look into innovative ways to maintain/enhance levels of service without increasing costs.

Councilmember Contino also expressed appreciation to Ms. Ghetti and noted that the staff had been diligently trimming and cutting everything. Councilmember McMahan asked whether Ms. Ghetti had any indication as to what might happen as far as State Shared Revenues next year.

Ms. Ghetti replied that she was at the League today and they had no concerns whatsoever about State Shared Revenues. She stated that staff was estimating lower State Shared Revenues just because of the economy but they were not anticipating any cuts from the Legislature.

Councilmember McMahan also expressed appreciation to Ms. Ghetti and her staff for their hard work.

- **CALL TO THE PUBLIC**

There were no citizens wishing to speak.

Vice Mayor Archambault announced that today was the Mayor's 44th Birthday, congratulated him and wished him a very Happy Birthday.

## **CONSENT AGENDA**

**AGENDA ITEM #1 – CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM JANUARY 27, 2009, FEBRUARY 5, 2009 AND FEBRUARY 10, 2009.**

**AGENDA ITEM #2 – CONSIDERATION OF APPROVING A SPECIAL EVENT LIQUOR LICENSE APPLICATION SUBMITTED BY RICHARD JONES (AMERICAN LEGION, POST 58) FOR THE PURPOSE OF A FUNDRAISER TO BE HELD AT 16837 E. PARKVIEW AVENUE, FOUNTAIN HILLS, ARIZONA, ON MARCH 14, 2009 FROM 9:00 A.M. TO 11:59 P.M.**

**AGENDA ITEM #3 – CONSIDERATION OF TAKING OVER THE MEDIAN MAINTENANCE ON SIERRA MADRE DRIVE AND DOVE DRIVE FROM THE NORTH HEIGHTS' HOMEOWNERS ASSOCIATION.**

**\*\*AGENDA ITEM #4 – CONSIDERATION OF RESOLUTION 2009-10, ABANDONING WHATEVER RIGHT, TITLE OR INTEREST THE TOWN HAS IN THE PORTION OF THE CROSS ACCESS EASEMENT LYING WITHIN PARCEL 2 OF THE FINAL PLAT OF EAGLES NEST, FOUNTAIN HILLS, ARIZONA, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 580 OF MAPS, PAGE 25.**

**\*\*NOTE: AGENDA ITEM #4, LISTED ABOVE, WAS REMOVED FROM THE CONSENT AGENDA AT THE REQUEST OF STAFF.**

**AGENDA ITEM #5 – CONSIDERATION OF APPROVING RESOLUTION 2009-11, ABANDONING WHATEVER RIGHT, TITLE OR INTEREST THE TOWN HAS IN THE CERTAIN PUBLIC UTILITY AND DRAINAGE EASEMENTS LOCATED AT THE SOUTHWESTERLY PROPERTY LINE OF**

**PLAT 603C, BLOCK 3, LOT 14 (16009 E. CHOLLA DRIVE) AS RECORDED IN BOOK 161 OF MAPS, PAGE 43, RECORDS OF MARICOPA COUNTY, ARIZONA. EA09-02 (ANDREE).**

Vice Mayor Archambault **MOVED** to approve the Consent Agenda items as listed (Items 1, 2, 3 and 5 with #4 removed) and Councilmember McMahan **SECONDED** the motion.

A roll call vote was taken with the following results:

Councilmember Dickey	Aye
Mayor Schlum	Aye
Councilmember Leger	Aye
Councilmember Hansen	Aye
Councilmember Contino	Aye
Councilmember McMahan	Aye
Vice Mayor Archambault	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

**REGULAR AGENDA**

**AGENDA ITEM #6 – CONSIDERATION OF RESOLUTION 2009-09, ADOPTING THE TOWN OF FOUNTAIN HILLS AMENDED AND RESTATED STRATEGIC PLANNING ADVISORY COMMISSION BYLAWS.**

Councilmember Leger **MOVED** to approve Resolution 2009-09, adopting the Town of Fountain Hills amended and restated Strategic Planning Advisory Commission (SPAC) Bylaws and Vice Mayor Archambault **SECONDED** the motion.

Councilmember Dickey asked for clarification relative to the actual change and Mayor Schlum advised that the change would allow the addition of an adult Commissioner and still allow for a youth to serve on the Commission in an ex-officio capacity.

The motion **CARRIED UNANIMOUSLY** (7-0).

**AGENDA ITEM #7 – CONSIDERATION OF APPOINTING CITIZEN(S) TO THE STRATEGIC PLANNING ADVISORY COMMISSION WITH EACH SERVING A TWO YEAR TERM BEGINNING MARCH 5, 2009 AND ENDING FEBRUARY 28, 2011.**

Mayor Schlum **MOVED** to appoint the following four adult citizens to the Strategic Planning Advisory Commission: Mike Dooley, Alan Magazine, Kurt Dunham and Rich Schultz and the following youth member Katherine Myhr, and Councilmember Leger **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

The Mayor requested that any newly appointed members present at the meeting stand and be recognized and thanked them for their willingness to serve the community.

**AGENDA ITEM #8 – CONSIDERATION OF ACCEPTING A SCULPTURE TITLED “NEED A LIFT” BEING PROPOSED BY THE PUBLIC ART COMMITTEE TO BE PURCHASED AND INSTALLED UTILIZING THE 1% PUBLIC ART FUND AND AN OIL PAINTING TITLED “WINTER VIEW,” WHICH IS BEING DONATED TO THE TOWN AND INSTALLED UTILIZING THE 1% PUBLIC ART FUND.**

Parks & Recreation Director Mark Mayer addressed the Council relative to this agenda item and said that at the previous meeting he had brought forward two items for the Council's consideration, "Need a Lift" and "Winter

View." He noted that "Need a Lift" was valued at \$20,000 and there was a potential delivery charge of \$1,000 and annual insurance costs in the amount of \$141.90. He added that the artist who created the piece was Randy Hand who had also contributed a couple of other pieces to the Town. He stated that the Public Art Committee was asking that the cost of this particular piece and its installation be taken out of the 1% Public Art Fund (money that was collected specifically for that purpose). He added that the second piece, "Winter View," and the artist who had created it, Mr. Hardaway, a Fountain Hills resident, had also done a number of other pieces around Town and was interested in donating this particular piece. He had asked that the Town prepare plaques that would recognize the current members of the Parks & Recreation Department. He noted that installation costs associated with this particular piece referred to the stretching and framing of the piece; there were no other installation costs, and the annual insurance cost for the \$25,000 donation would be \$107.50. He reported that as of the time he wrote the memo on this item, there was \$27,191 in currently uncommitted dollars in the Public Art Fund account. He said that acceptance of these two pieces and associated installation costs would potentially leave a balance of \$5,717 in the fund. Mr. Mayer noted that he had included in the packet for the Council's review a diagram that showed where the piece "Need a Lift" would be located (in the courtyard area) and pointed out that "Winter View" would potentially be placed in the lobby of Town Hall as you went up the stairs to the right.

Vice Mayor Archambault **MOVED** to accept the sculpture titled "Need a Lift" to be purchased and installed utilizing the 1% Public Art Fund and the oil painting entitled "Winter View," which was being donated to the Town and installed utilizing the 1% Public Art Fund and Councilmember Dickey **SECONDED** the motion.

Town Clerk Bev Bender advised that there were no citizens wishing to speak on this agenda item.

The motion **CARRIED UNANIMOUSLY** (7-0).

**AGENDA ITEM #9 – DISCUSSION WITH POSSIBLE DIRECTION TO STAFF RELATING TO THE REDUCED SCOPE OF WORK AND REDUCED COST FOR PARKING IMPROVEMENTS AT THE BOTANICAL GARDEN.**

Mr. Mayer addressed the Council relative to this agenda item and said that on September 18th he had brought this item forward and at the time, in preparation for this Fiscal Year, staff had budgeted \$68,000 for this particular project. He stated that at the time, staff estimated a revised cost of \$52,000 and noted that there were only six members of the Council present at that meeting and the issue was tabled due to a 3-3 vote. Mr. Mayer noted that the Town Attorney was asked that evening under what circumstances this item might be brought back again for reconsideration and he advised that there needed to be a substantial change in either the scope or the cost of the project. He said that staff was asked by Mayor Schlum to take a fresh look at the diagram in an effort to determine whether there were some ways to help bring the cost down. Mr. Mayer commended the CAD staff and said that he had worked with Ken Valverde and thanked him for his great assistance. He added that they came up with a number of things that helped to bring the estimated cost down further to just over \$21,000. He reported that the figure represented a 70% reduction from the original \$68,000 estimate.

Mr. Mayer advised that funds had been budgeted for this from Development Fees, which were raised specifically for these types of projects, and reported that improvements would address a number of current safety concerns. He said that staff was seeking direction from the Council relative to this issue.

Councilmember Dickey **MOVED** to direct staff to proceed with the project as described and Vice Mayor Archambault **SECONDED** the motion.

Ms. Bender advised that five speaker cards were submitted and the Mayor asked the speakers to come up as their names were called.

Paul Kolwaite, Trevino Drive, a member of the Botanical Garden Group, addressed the Council and said that he believed that the project would be "a true feather in the cap of Fountain Hills." He added that as he drove to the meeting this evening he noticed a car parked there and people were wandering around and viewing the site. He



noted that the car was parked up the street adjacent to private property and stated that the people had to walk down along Fountain Hills Boulevard and it was getting dark out. Mr. Kolwaite said that the parking area would eliminate the potential of accidents and enhance pedestrian safety.

Caroline LaPenta addressed the Council and stated that the group had pretty much done everything that the Council had asked of them, i.e. cut the price, change the scope of work, provide a plan to maintain it, etc. She urged the Council to vote in support of this proposal.

Jane Haynes addressed the Council and said that she had provided the Council with copies of the early history of the Garden and how it got started. She added that so much work had been done since that time and requested that the Council support the group's request for a parking lot. She commented on all of the people who donated time and effort into developing the Garden and added that it had been a real adventure. She noted that the Botanical Garden would bring prestige to the Town and would serve as a showcase of unspoiled desert environment.

William Zoino addressed the Council and concurred with the remarks of the previous speakers. Mr. Zoino stressed the wonderful teamwork that went into this project and requested that the Council support this item.

Elizabeth Segal addressed the Council and reiterated the group's hope that the Council would support this critical project. She stressed the importance of providing access to something that was so beautiful and educational for generations to come.

Mayor Schlum thanked all of the speakers for their comments.

Councilmember McMahan commented that he was originally opposed to the parking lot project because he believed that the cost could be moved into the future in view of the present economic situation. He added, however, that the wonderful volunteers had turned the garden into a magnificent national desert garden and Town staff who had worked with them had reduced the cost dramatically and that he had changed his mind and would now vote to approve the project. He added that this would permit Botanical Garden enthusiasts to have this amenity as soon as possible, including the delightful 90-year old resident who had worked on the Garden for 40 years. He told Ms. Jane Haynes that this was truly a tribute to her and her efforts.

Vice Mayor Archambault stated that he had been fortunate to see the history of this Town and how it had developed. He looked back now and stated the opinion that there were opportunities that he had missed and things that he should have taken advantage of but did not. He clarified that he was not talking from a financial standpoint but rather about the people you get to know, the history that went by, etc. He said that it makes him sad to see some of the history start to disappear and he hopes that they could preserve this. He recalled that two years ago the Town gave the group \$10,000 to do something to start rejuvenating the Garden, and he believed they had probably done \$50,000 worth of work. He commented on the volunteers involved in the project and commended everyone who participated in this long, worthwhile project.

Councilmember Contino concurred with Councilmember McMahan's remarks and stated that he wanted to see the project move forward. Councilmember Dickey also indicated that she had been for it before and was obviously happy now that it appeared it would go through and restated her support for this worthwhile project as well.

In response to a question from Councilmember Hansen, Mr. Mayer advised that there would be five parking spaces.

Councilmember Hansen said that if the Garden became a popular destination location, five spaces might not be adequate. She asked if there was any way to use bollards along the acceleration lane to enhance safety (provide a divider between where people were parking and Fountain Hills Boulevard).

Mr. Mayer replied that the parking lot would be constructed so that if a need existed, it could be expanded. He added that it was important to remember that because it would receive sunrise to sunset use and the usage would be scattered throughout the day. Staff did not anticipate that many people would come potentially at any one time unless there was an activity taking place. He said that in talking with the schools they found out that what they typically did was bring a bus, off-load the kids, and then remove the bus. He stated that they came back later to pick them up but did not typically park at the site. He reiterated that there was the possibility for expansion should the need arise.

Councilmember Hansen asked whether efforts were expended to obtain Community Foundation grants and Mr. Mayer said that he took the information that Councilmember Hansen had provided to the Chair and asked that she follow up on this matter. He reported that it was his understanding that it needed to be a "not for profit" group as opposed to the Town applying for it. He also clarified that the \$15,000 originally budgeted for this project last year was for grading purposes and none of that money was spent. He said that, in theory, they took the \$15,000 from last year and had rolled it over into this year so the request was really for an additional \$6,000.

In response to a question from the Mayor, Town Attorney Andrew McGuire stated that the motion on the floor was an appropriate one.

The Mayor called for a vote on the motion.

The motion **CARRIED UNANIMOUSLY** (7-0).

**AGENDA ITEM #10 – PUBLIC HEARING ON ORDINANCE 09-04, AMENDING A PORTION OF THE OFFICIAL ZONING MAP, LOT 29, BLOCK 2, PLAT 506-C, LOCATED AT 16225 N. CERRO ALTO DRIVE, FROM R1-35, SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT TO R1-35H, SINGLE-FAMILY RESIDENTIAL HILLSIDE ZONING DISTRICT. CASE #Z2008-07.**

Mayor Schlum declared the public hearing open at 7:36 p.m.

Gene Slechta addressed the Council relative to this agenda item and provided a brief overview of the staff report. He advised that Town Council's approval of this agenda item would result in an amendment to the Town's official Zoning Map. He noted that the parcel was Lot 29, Plat 506-C, Block 2, located at 16225 N. Cerro Alto Drive and consisted of 2.72 acres and was currently zoned R1-35 Single-Family Residential. He explained that R1-35 indicated a minimum lot size of 35,000 square feet or 8/10ths of an acre. He stated that the applicants were requesting a rezoning from the R1-35 designation to R1-35H, Single-Family Residential Hillside. He noted that since this was an amendment to the official Zoning Map, an ordinance approved by the Council was required. He stated that the applicants had submitted this request with two objectives in mind for development: (1) Since the property was a hillside property and steep, with slopes exceeding 30% in many areas, the applicants wished to avoid considerable additional expense associated with having to build farther down the hillside; and (2) the large size of the property (nearly three [3] acres) and its large frontage, made it attractive to consider a lot split. He added that rezoning the property made a lot split easier in this particular case.

Mr. Slechta advised that zoning districts R1-35 and R1-35H differ in two ways: On corner lots, the street side setback was slightly different - for R1-35 it was 20 feet and for R1-35H it was 20 feet or the building height, whichever was greater. However, since this was not a corner lot, this did not have to be taken into consideration. He added that for the front setbacks the setbacks for R1-35 were 40 feet and for R1-35H it was 20 feet and noted that this provided the developer some flexibility in building placement (potentially closer to the street to reduce development costs on the hillside property). Mr. Slechta informed the Council that this request was consistent with the General Plan, which identified the parcel as being in the Single Family, low density residential category in both R1-35 and R1-35H as well as R-18. He said that staff's opinion was that no General Plan Amendment was required and as far as compatibility with the neighborhood, most of the property was within a 300-foot radius of 23 of the 28 properties zoned R1-10 with 20-foot front setbacks. He stated that

it was important to note that the applicants were considering a request for a lot split as a next step. He advised that under R1-35, if a lot was split into two parcels they could not meet what was called the 90% rule, which was having the resulting parcel's square footage being equal to or greater than 90% of the average of the surrounding like zoned parcels. He stated that even though each of the like zoned parcels could easily have over an acre each of land, it would not be enough to meet the rule. He noted that one adjacent property in particular that was zoned R1-35 happens to be 22 acres and skews the average and said that rezoning the property to R1-35H resolved that issue. He informed the Council that the Planning & Zoning Commission unanimously recommended approval of the amendment on January 22, 2009.

Mr. Slechta referred to a map displayed in the Chambers and said that it clearly showed the neighboring properties and noted the 300-foot radius around the property. He added that 5 of the 28 lots were R1-35 and the remaining properties surrounding the applicant's property were R1-10. Mr. Slechta stated that staff recommended approval of the applicant's request and noted that the applicant was present to respond to questions from the Council.

Town Clerk Bev Bender advised that there were no citizens wishing to speak on this item.

Mayor Schlum declared the public hearing closed at 7:42 p.m.

**AGENDA ITEM #11 – CONSIDERATION OF ORDINANCE 09-04, AMENDING A PORTION OF THE OFFICIAL ZONING MAP, LOT 29, BLOCK 2, PLAT 506-C, LOCATED AT 16225 N. CERRO ALTO DRIVE, FROM R1-35, SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT TO R1-35H, SINGLE-FAMILY RESIDENTIAL HILLSIDE ZONING DISTRICT. CASE #Z2008-07.**

Councilmember Leger **MOVED** to approve Ordinance 09-04, amending a portion of the official Zoning Map, Lot 29, Block 2, Plat 506-C, from R1-35, Single-Family Residential Zoning District to R1-35H, Single-Family Residential Hillside Zoning District and Councilmember McMahan **SECONDED** the motion.

Ms. Bender advised that there were no citizens wishing to speak on this agenda item.

Mayor Schlum commented on the fact that the frontage appeared to be quite large on this lot and said that if the applicant ended up coming forward with a split it would made the lots "kind of square." He added, however, that the frontage along Cerro Alto appeared to be similar.

Mr. Slechta, responding to a question from the Vice Mayor, said that it would be perfectly acceptable to split this lot.

The motion **CARRIED UNANIMOUSLY** (7-0).

**AGENDA ITEM #12 – CONSIDERATION OF ORDINANCE 09-05, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 7, BUILDINGS AND BUILDING REGULATIONS, BY ADDING A NEW ARTICLE 7-11, ENFORCEMENT OF STATE RESIDENTIAL RENTAL PROPERTY REGISTRATION.**

Environmental Planner Raymond Rees addressed the Council relative to this agenda item and advised that the Town's Code Enforcement Department and Building Officials had difficulties enforcing the Town's nuisance ordinances and safety issues concerning building issues with properties that had out-of-state landowners. He said that the properties were rentals and did not have any in-state representatives. He advised that lawmakers had come up with a law that gave municipalities the authority to enforce the rules to have property owners register an in-state representative to act on their behalf. He discussed research conducted by staff and reported that they had contacted the cities of Glendale, Tempe, and Surprise and said that all of them had ordinances that related to this issue in place. He stated that staff was proposing that Article 7-11 be added to the Town Code to improve staff's ability to enforce the codes/ordinances on properties that had out-of-state owners. He added that

staff's recommendation was to adopt Ordinance 09-05 amending the Town Code, Chapter 7, Buildings and Building Regulations by adding a new Article 7-11, Enforcement of State Residential Rental Property Registration. Mr. Rees indicated his willingness to respond to questions from the Council.

Mayor Schlum **MOVED** to approve Ordinance 09-06 as presented and Vice Mayor Archambault **SECONDED** the motion.

Ms. Bender advised that there were no citizens wishing to speak on this agenda item.

Mayor Schlum asked Mr. Rees how they would obtain information on out-of-state owners and Mr. Rees advised that the law required that the Assessor, upon request of the municipality, provide that information. He noted that currently the Town had about 780 rental properties in Town.

Town Attorney Andrew McGuire commented on the fact that this provision authorized the Town to go forward and do a number of things with respect to the list and also would give the Town mandatory enforcement capabilities with respect to people who failed to register. He added, however, that until the Town had a Code provision like this one, enforcement would have to be done by the Sheriff's Department. He said that in order to allow Code Enforcement personnel to actually perform the enforcement, a local regulation must be in place. He stated that the City of Tempe several years ago had adopted a pretty stringent landlord/tenant set of regulations that the State Legislature did not approve of and so now the only registration requirements that could be enacted and the only rental registration codes that could be provided were at the State level.

Mr. McGuire added that the motion should be restated because he believed it was stated as Ordinance 09-06 and it was actually Ordinance 09-05.

Mayor Schlum **MOVED** to approve Ordinance 09-05 as presented and Councilmember Vice Mayor Archambault **SECONDED** the motion.

(Councilmember McMahan left the dais at 7:50 p.m.)

Councilmember Contino said that he had heard that there were a lot more rentals in Town than the amount reported by Mr. Rees and asked if there was any way to actually determine the actual number of rentals. He stated that he has heard two different stories from real estate people regarding how many properties they had for rent and some of the numbers were pretty high.

Mayor Schlum asked whether apartments were included in the number provided by Mr. Rees or whether it referred only to privately owned property that was being rented out.

Ms. Ghetti informed the Council that staff got the list of all rental properties from Maricopa County and stated the opinion that it did not include all of the individual apartments (would include the one apartment building but not all of the individual apartments in the buildings). She said that she would be happy to check on this and obtain an updated list from the County.

Vice Mayor Archambault commented on the fact that a business license was required if you had a rental property and asked if a license was needed if the property was listed with a realtor.

Ms. Ghetti replied that if the property owner registered with a property management company that collected the rent, then the property management company held the business license. Mayor Schlum called for a vote on the restated motion.

The motion **CARRIED UNANIMOUSLY** by those present (6-0).

**AGENDA ITEM #13 – CONSIDERATION OF A SERVICES AGREEMENT WITH 3D/INTERNATIONAL, INC. IN THE AMOUNT OF \$190,401.33 FOR THE ALAMOSA SIDEWALK IMPROVEMENT.**

Town Engineer Randy Harrel addressed the Council relative to this agenda item and said that staff was able to prepare plans for a sidewalk along the south side of Alamosa with a Pedestrian Design Assistance Grant from the Maricopa Association of Governments (MAG). He noted that the cost was substantially below the budgeted amount and added that the sidewalk would be six feet wide. Mr. Harrel stated that he believed this to be a very important sidewalk link in the community and requested that the Council approve the request.

Councilmember Dickey **MOVED** to approve the contract with 3D/International, Inc. to construct the Alamosa Avenue sidewalk in the amount of \$190,401.33 and Vice Mayor Archambault **SECONDED** the motion.

Ms. Bender advised that one citizen has submitted a request to speak.

Rich Schultz, Vista Del Lago, addressed the Council and noted that the Strategic Plan stated that the Town shall maintain safe pedestrian walkways and said that this was one of them. He added that the Council's new goals also talked about pedestrian ways. He said that this improvement would significantly enhance pedestrian safety and urged the Council to support the request.

Councilmember Dickey commented that she concurred with the statement made by Mr. Schultz relative to the Council's goals and the importance of pedestrian safety and being a walkable community. She noted that the sidewalk would lead to churches, schools, parks, and to the Boys & Girls Club, as well as to homes with a high concentration of families with children. She said that in this day and age they had to prioritize and stated the opinion that this project was a priority and she would vote in support of the improvement.

Vice Mayor Archambault asked whether this sidewalk would finish the connection from Four Peaks Elementary all the way to the Middle School and Mr. Harrel confirmed that it would. Vice Mayor Archambault said that he considered this project to be a safety issue and he would vote in support of the motion. He stressed the importance of encouraging people to utilize this sidewalk.

(Councilmember McMahan rejoined the meeting at 7:53 p.m.)

Councilmember Hansen stated that following discussion of this item at the last meeting and hearing about all of the youths, she decided to go and take a look at the area herself. She said that between February 11<sup>th</sup> and the 27<sup>th</sup>, she went out at 3:30 in the afternoon (when children got out of school at Four Peaks) and parked in the tennis court parking lot, which had a great view of Alamosa. She informed the Council that she did a "kid count" for 30 minutes. Councilmember Hansen advised that she watched how the traffic was moving and what the kids were doing and reported that there were only five or six kids that walked down Alamosa during that 30-minute timeframe. She added that an equal amount would go right into the villas that did not go down Alamosa; they cut into that area. She reported that on average there were 5.33 kids per day, 3.17 bikes per day and 5.83 kids going into the villas. She said that it was also interesting to note that on the two Wednesdays that she was there, there were two garbage trucks in the 30-minute time period. She stated that she witnessed the bigger problem – the way people were driving through that intersection. Once the traffic slowed down at about ten minutes to four, then there were not any kids and the cars really cut down but there was a 20-minute time period where there was a steady stream of traffic, there were a lot of bus vehicles picking up kids at the school and taking them to Christ Church and after school programs. She added that it was more people picking their kids up than the kids actually walking down the street at that time of day. She advised that she had a bigger concern about what could be done such as a crosswalk at that particular intersection before and after school. She said that she thought it was important to "get a handle on this issue" because it was a big expenditure.

Councilmember McMahan stated that he wished to register his opposition to this proposal and said that this was one of those desirable projects that he believed could be postponed until next year. He noted that they were

talking about \$190,000 and they had had traffic situations in that area for years and he was not aware of any serious accidents that had occurred. He added the opinion that the money should be put in the bank right now and be spent more wisely next year.

Mayor Schlum said he felt the same way he felt the last time they discussed this matter. He stated that he was sensitive about spending any dollars but he believed this was a project that would make the high density area safer. He noted that the area probably had more families and youths than any other area in Town, particularly in the multi-dwelling unit area, and commented on the fact that it would connect the schools and people in those higher density family areas. The Mayor said that he was in favor of the project and appreciated sensitivity about spending dollars at this time but they did have the money in the budget for this and he believed it appropriate to move forward.

Councilmember Contino said that he was opposed to spending the money now but if it was not going to damage anything he would support it since the money was already in the budget (although environmentally they were going to cut down a lot of trees).

The Mayor agreed that they had to be sensitive to the environment and noted that some of the property owners had asked the Town to remove some of the trees.

Vice Mayor Archambault noted that the trees along Alamosa for the most part were palm trees that went approximately 60 feet into the air. He commented on the fact that their roots got into the sewer systems and that was the main reason that the HOA was asking for the trees to be removed. He added that the trees did not add a whole lot of shade. He added that the money they were talking about spending was capital improvement funds and expressed the opinion that proceeding with this project represented a wise decision and was not wasteful spending. He also commented on a tragic fatal accident in that area that took place in 1978 and added that the project was in line with the Council's goals.

Councilmember Contino stated that he resented the fact that local contractors were not included in some of this including Fort McDowell Redi-Mix.

Mr. Harrel responded that this was being contracted under a job order contract through the Mohave Educational Services Contract; they did not have a contract of their own at the current time although they anticipated having one in the future. He added that a Fountain Hills' contractor was doing a majority of the work.

Councilmember Hansen expressed the opinion that the sidewalks really would not help the kids on the bikes because they rode in the street and reiterated her desire to look at that intersection to see what could be done to enhance safety.

Mr. Harrel advised that staff would be studying that intersection and added that discussions relative to a crosswalk would have to take place with members of the School District.

The motion **CARRIED** by majority vote (5-2) with Councilmembers Hansen and McMahan voting Nay.

**AGENDA ITEM #14 – DISCUSSION WITH POSSIBLE DIRECTION TO STAFF RELATING TO NEGOTIATIONS OF RENEWING THE PROPOSED CONTRACT BETWEEN THE TOWN OF FOUNTAIN HILLS AND RURAL METRO FOR FIRE AND EMERGENCY SERVICES FOR A FIVE-YEAR PERIOD BEGINNING JULY 1, 2009 AND ENDING JUNE 30, 2014.**

Town Manager Rick Davis addressed the Council and said that over a month ago the Fire Services Committee provided a report that focused on two options: (1) Bring our own firefighters in-house and form a municipal fire department; and (2) Renew a contract with Rural Metro for long term fire services. He noted that it was the recommendation of the Committee at that time that the Town renew its contract with Rural Metro but added that staff wanted to provide the Council with sufficient time to review the report and respond to any questions the

Council might have. He stated that staff was seeking direction from the Council relative to their recommendation that they move forward with negotiations for a contract with Rural Metro.

Mayor Schlum clarified that the Council was not approving a contract at this time; staff was merely seeking direction on whether to proceed with negotiations for a contract with Rural Metro.

Mr. Davis said that staff hoped that they would have a contract for the Council to consider in April. He said that should the Council concur, staff's intention was to begin scheduling meetings immediately between the Fire Services Committee and Rural Metro to begin the negotiation process. He confirmed that staff's understanding was that they were moving proactively on the issue of providing service to the underserved area in the Eagle Mountain area as well as other deficiencies that might occur during the contract time.

Vice Mayor Archambault asked whether staff had received a report back from TOPAZ and Mr. Davis advised that they had not. He said that staff expected to receive the report in the very near future. The Vice Mayor commented on the fact that Rural Metro previously stated that they did not have any problems addressing any communication drop offs (dead zones) and said he wanted to make sure that that became part of the contract.

Mr. Davis advised that the Fire Services Committee identified four or five different issues that need to be addressed in the contract and dead zones was one of them.

Vice Mayor Archambault **MOVED** to direct staff to investigate a contract with Rural Metro under the guidance of the Fire Services Committee and Councilmember McMahan **SECONDED** the motion.

Ms. Bender advised that there were no citizens wishing to speak on this item.

The motion **CARRIED UNANIMOUSLY** (7-0).

#### **AGENDA ITEM #15 – CONSIDERATION OF A SETTLEMENT AGREEMENT RELATING TO THE GOLF RESORT PROPERTIES, LLC LITIGATION.**

Councilmember Contino **MOVED** to move forward on a settlement agreement relating to the Golf Resort Properties, LLC litigation and Councilmember McMahan **SECONDED** the motion.

Town Attorney Andrew McGuire addressed the Council relative to this agenda item and provided brief background information relative to this issue. He said that this matter began based upon citizens' concerns in one particular neighborhood relating to a rental property that was being used as a golf vacation house. Through the litigation and enforcement action on this case, the Town discovered that there were actually three homes being operated by the same entity. The Zoning Administrator made a determination that this was a commercial use in a residential area in violation of the Zoning Ordinance. The business licenses were denied for the next year and after such time a hearing was held on appeal from Golf Zoo to have the business licenses issued. The Council sat as the quasi-judicial body and ruled in favor of denying the business licenses and that was then converted into an action in Superior Court against the Town to issue the licenses. It started off as one kind of lawsuit and turned into seven or eight different things as complaints were constantly amended throughout the process. Mr. McGuire reported that the end result was that despite the several hour hearing and a mountain of evidence, the Judge agreed with Golf Zoo that it was an arbitrary and capricious decision. He advised that this happened over a year ago and the last part has been the damages portion of the case.

Mr. McGuire stated that the Town's insurance carrier recommended that they try to sit down and settle this as litigation costs were increasing without any resolution and that resulted in the settlement before the Council this evening. He reported that the total amount of the settlement was \$125,000, of which about \$43,000 was the Town's portion (the remainder was handled by the Risk Pool). He pointed out that this case had a Notice of Claim filed in the area of \$400,000 to \$500,000. At the mediation staff attended with the property owners last year, their demand was \$1.3 million. He said that he would not say he considered this a victory; he would say

that it was good to finally resolve this case that resulted from the Town trying to step up and defend the neighbors' interest and protect the single-family nature of neighborhoods and ensure that people could enjoy the homes that they bought.

Mr. McGuire said that through this process staff had come to a number of understandings about how they were going to have to address this process in the future. He added the opinion that staff might be back before the Council with potentially mitigating opportunities but added that in the end he believed that this use would survive throughout the Town as it did in other communities.

Mayor Schlum thanked Mr. McGuire for the overview.

Ms. Bender stated that there were no citizens wishing to speak on this agenda item.

The motion **CARRIED UNANIMOUSLY** (7-0).

**AGENDA ITEM #16 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER. ITEMS LISTED BELOW ARE RELATED ONLY TO THE PROPRIETY OF (i) PLACING SUCH ITEMS ON A FUTURE AGENDA FOR ACTION OR (ii) OR DIRECTING STAFF TO CONDUCT FURTHER RESEARCH AND REPORT BACK TO THE COUNCIL:**

A. None.

**AGENDA ITEM #17 – SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE TOWN MANAGER**

Mr. Davis requested that he be excused from the next Council meeting. Mayor Schlum reminded Mr. Davis that he would look into the crosswalk issue and the Rural Metro contract as well.

**AGENDA ITEM #18 – ADJOURNMENT**

Vice Mayor Archambault **MOVED** that the Council adjourn the meeting and Councilmember Contino **SECONDED** the motion, which **CARRIED UNANIMOUSLY**. The meeting adjourned at 8:25 p.m.

**TOWN OF FOUNTAIN HILLS**

By \_\_\_\_\_  
Mayor Jay T. Schlum

ATTEST AND  
PREPARED BY:

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive and Regular Sessions held by the Town Council of Fountain Hills on the 5th day of March 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 19<sup>th</sup> day of March 2009.

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk